

REPRESENTATIVE TOWN MEETING  
MINUTES OF A REGULAR MEETING  
of the  
RULES COMMITTEE

September 14, 2009

A regular meeting of the Rules Committee was held on September 14, 2009 in Room 119, Town Hall.

Present at the meeting and constituting a quorum were:

Karen Armour (KA, Moderator)  
Mark Adiletta (MA)  
Harry Artinian (HA)  
Elizabeth Bacon (LB)  
Gene Coyle (GC)  
Jack Davis (JD)  
Janet Grogan (JG)  
John Price (JP)  
Flora Smith (FS)  
Gary Swenson (GS)  
Robert Young (RY)

The Rules Committee approved the minutes of April 20, 2009 without objection.

RY moved to modify the agenda and move the 35 Leroy discussion to the beginning of the meeting. JD seconded. The vote was 10 to 1 in favor with FS opposed.

The following discussion ensued regarding the 35 Leroy property option to lease that was previously approved by the BOS.

JD stated that he was originally in favor of the RTM requesting a review of the Town Counsel's opinion that the option to lease 35 Leroy (hereafter "option") as discussed in RTM member, Ted Hawkins', letter to the editor in the Darien Times. However, due to the anticipated cost of \$10,000 to \$20,000 to proceed with this during the current economic climate, as well as the RTM's having the authority to deny the lease at a future date, JD stated that he was no longer in favor of pursuing a second legal opinion.

KA stated that the contractor required a document to pursue financing of the project and the option was the best alternative per Mr. Fox. KA further stated that Mr. Fox stated that, upon its meeting all terms and conditions, the RTM would have the authority to vote on the final lease. Based upon current-year budget, it is anticipated that the property would cost the Town \$27,000 per year in carrying costs.

HA stated that the option had some terms that were of concern. They are:

- A 99-year lease with an additional 99-year lease option
- Financial risk to Darien for damages from the option party should the lease not be brought to fruition
- An anticipated carrying cost of \$50,000 per year
- The term “best efforts” was in the lease without specific performance statements thereby having those “efforts” undefined opening Darien to litigation
- Estoppels value of the \$5 million property
- Town counsel’s opinion that the BOS had the authority to sign the option without presenting the option to the RTM for approval was incorrect

Therefore the RTM should have been presented with the “option” to obtain the RTM’s approval.

HA made the following motion:

“Be it resolved that the Representative Town Meeting of the Town of Darien (“RTM”) hire legal counsel, separate and apart from the current Town Counsel, to advise the RTM as to:

(1) Whether the RTM has a duty and an obligation to act on the Option to Lease Agreement adopted by the Board of Selectmen on August 3, 2009 prior to its execution, and

(2) Once the Option to Lease 35 Leroy (in its present form) is signed, executed by all parties and delivered, whether the Optioner might have legal standing to bring suit against the Town of Darien by claiming that the Town of Darien did not use its “best efforts” to implement the Option to Lease Agreement, and

(3) Once the Option to Lease 35 Leroy is signed, executed by all parties and delivered whether the Optioner would have legal standing to bring suit against the Town of Darien should the Town of Darien decide, at a later time but while the option is still valid, to sue 35 Leroy for some other purpose (including selling or leasing 35 Leroy to a different party).”

The motion was seconded by GC.

JG questioned the process to be employed for the RTM to hire an outside counsel. Discussion ensued by several members regarding how to hire an outside counsel for the RTM including the need to approach the BOF to obtain funding for the initiative. JP stated that JD’s estimate for legal costs were extremely low and that based upon the need to review the Town Charter and Code of Ordinances, his cost estimate was between \$50,000 to \$100,000.

[Ed Note: This paragraph is being amended per discussion at 10/5 Rules Meeting.] JP further stated that if it was determined that the RTM indeed had the authority and responsibility to approve the option, then the option would go to vote. If then the RTM voted down the option, JP questioned what actions would be required by the RTM to pursue a contrary vote to the BOS.

FS stated that the Rules Committee should have had this option, the hard copy earlier. KA stated that she was aware of the decision of the Town Counsel and did not believe the RTM then had authority, therefore, KA did not pursue. GS stated that without reading the option, it was difficult for him to comment at this time. It was further stated by several members their disappointment that some Rules Committee members had the written "option" without considering distributing it to the full body. GS further stated that the RTM should be part of the process so it can speak from strength.

FS stated that she was concerned that the property would be tied up to the option for the next three years thereby limiting the alternatives available to the Town as well as the cost to carry. FS further stated that she was concerned that the option stated that the lease term would be for 99 years with an additional 99-year option to be executed by the lessee.

RY raised the issue that the Optioner will have invested a significant cost in this project and should the lease not be completed, it is his experience, that the Optioner will seek to recover costs. JP agreed.

JD reviewed the option and referred to two sections of the option. The first section was the required contingencies associated with the option. It required obtaining the financing within a specified timeframe; obtaining all necessary building approvals; and, having the final lease approved by both the BOS and the RTM. JD further read that the option stated that if all of the above were not met, the option would be "null and void". JD stated that it would be difficult to litigate when the Optioner's actions were based upon the passage or approval of two legislative bodies, as such passage was not guaranteed upon the signing of the option nor did the "best efforts" clause ensure such passage. JD further referred to the section where the option stated that all costs incurred during the term of the option were the sole responsibility of the party incurring said costs.

GC called the option beyond useless and suggested the RTM hire an outside counsel to review the process.

Evonne Klein asked to speak and was granted permission by the Moderator.

The first selectman started to review the history of 35 Leroy. FS asked the first selectman to stay on point. JD seconded. Ms. Klein then covered the key points to the option.

A discussion question was raised why Mr. Fox was not in attendance. KA stated that she and he had discussed the matter and felt the Rules Committee could manage on its own.

LB raised the issue of financial risk to the Town and that this should be addressed with the greater RTM.

The final vote on the motion was 2 in favor (HA, GC); 7 against (MA, RY, GS, JG, JP, LB, JD) and 2 abstaining (KA, FS). The motion thereby failed to carry.

Next on the agenda was the assignment of committees to action items.

KA discussed the change in the ordinance to establish a trust for funding of health care costs. (RY moved, FS seconded, passed unanimously)

KA discussed the items surrounding the change to the ordinance and referred to the write-up from Jack Whitehead (who could not attend the meeting). Copy of write-up is attached. (JD moved, GS seconded, passed unanimously)

KA explained the need to approve the funding for the sewer. (RY moved, FS seconded, passed unanimously) Chris Noe, RTM member, provided a letter to the Rules Committee regarding the sewer (copy is attached)

KA explained the gift from the Garden Club for the Weed Beach Project. RY suggested that PZ&H be added. (FS moved, LB seconded, passed unanimously)

KA stated that the FEMA item would not be on the agenda. FS stated that it should not be on the agenda until final costs are determined.

FS moved that RTM member Sam Schoonmaker should provide an overview to the RTM regarding the option. Further, KA would provide the high level overview of the Rules Committee discussion. It was further resolved that there would be no discussion by any member. This was an update regarding the Rules Committee discussion and that the BOS adopted an option to lease 35 Leroy. HA seconded. The motion passed unanimously.

The final agenda was set as follows:

- Update on H1N1
- Sewer Bond
- Weed Beach Building project gift
- Chapter 78
- Health trust
- Update on Rules Committee discussion of option

JD moved and HA seconded. Passed unanimously.

FS moved the meeting be adjourned. GS seconded. Without objection the motion passed.

Respectfully submitted.

Jack H. Davis